

Amended Summary
Water Pollution Control Board
Indiana Government Center North
Conference Room A
Indianapolis, Indiana
Wednesday, November 9, 2011

1. CALL TO ORDER

Chairman Gary Powdrill called the meeting to order at 1:30 p.m. A quorum was present.

Members present: Gary Powdrill; Ted Alexander; Dennis Wene; Mark Legan; Erin Crofton; Dave Wagner; Eric Shields, Eric Wyndham; and Mike Mettler.

Present for IDEM: Commissioner Thomas Easterly; Bruno Pigott, Assistant Commissioner, Office of Water Quality (OWQ); Martha Clark Mettler, Deputy Assistant Commissioner, OWQ; Bruce Palin; Assistant Commissioner, Office of Land Quality (OLQ); Dennis Lasiter, Technical Environmental Specialist, Permit Branch, OLQ; Michael Dunn, Senior Environmental Management, Permit Branch, OLQ and Nancy King, Branch Chief, Rules Development Section, Office of Legal Counsel.

2. INTRODUCTION OF BOARD MEMBERS

Chairman Powdrill asked the board members to introduce themselves and their affiliations.

3. APPROVAL OF MEETING SUMMARY

Chairman Powdrill called for approval of the September 14, 2011 meeting summary. With a motion made and duly seconded, the board voted unanimously to approve the September 14, 2011 summary without changes.

4. REPORTS

- NPDES Permit Backlog Report – Mr. Pigott reported that the agency recently issued NPDES permits to Arcelor-Mittal East and Arcelor-Mittal West facilities.
- NPDES Pesticide General Permit – Mr. Pigott stated that IDEM had issued the general permit as required by the federal court.
- Water Quality Standard for Chlorides and Sulfates – Mr. Bruno Pigott reported that the workgroup had composed a revision for its second notice. He added that the second notice would be published in the Indiana Register on November 16, 2011. Mr. Pigott also indicated that the rulemaking would probably come before the board for preliminary adoption in February 2012.
- Antidegradation – Ms. Mettler reported that IDEM was preparing for a third notice for comment. She noted that the draft rule language would be the same rule language as preliminarily adopted.
- Nutrient Criteria for Indiana Lakes – Ms. Mettler announced that there would be a kick-off meeting on November 17 to discuss the nutrients relevant to phosphorus and water quality standards for discharges to lakes. Ms. Mettler hoped that enough people would be interested in attending and starting a workgroup.

5. RULE ACTIONS

Confined Feeding Operations (CFO) Rule

Chairman Powdrill opened the public hearing to consider final adoption of the Confined Feeding Operations rule. He introduced Exhibit 1-A, IDEM's suggested changes to the proposed rule, and Exhibit 2-A, proposed rule as preliminarily adopted, into the record of hearing.

Mr. Bruce Palin spoke for the agency. He clarified an additional document "IDEM's additional suggested changes" that identified changes to the proposed rule that were not included in water board packet that was mailed. He continued explaining the specific changes in the document prior to discussing the backgrounds of the CFO and

CAFO rulemakings. Mr. Palin also discussed certain issues that had evolved from previous comments received and how the agency tried to address them.

Board members questioned Mr. Palin concerning a potential guidance document, ground water monitoring, and multi-year phosphorus applications.

Chairman Powdrill called for the public commentors: Bruno Pigott read e-mail comments on behalf of Ms. Carol Cohee, Starting Point Foods, Inc.; Ms. Barbara Sha Cox, concerned farmer; Mr. Bowden Quinn, Conservation Program Coordinator Sierra Club, Hoosier Chapter; Mr. Dan McInerny, on behalf of Fair Oaks Farms; Mr. Justin Schneider, on behalf of Indiana Farm Bureau, Inc.; Mr. Michael Veenhuizen, President and Senior Engineer with Livestock Engineering Solutions; Ms. Kristin Whittington, Landmark Enterprises; Mr. Todd Janzen, Indiana Professional Dairy Producers, Mr. Tim Maloney, Hoosier Environmental Council; Ms. Julia Vaughn, Citizens Action Coalition of Indiana; Ms. Janiece Pardue, concerned farmer, Mr. Richard Stout, concerned farmer, and Ms. Kathy Martin, engineer.

Prior to the public hearing ending, Chairman Powdrill announced that Mr. Dennis Wene had to leave.

The public hearing concluded, and there was Board discussion. The Board discussion focused on data collection and reporting related to the land application of manure and the lack of any requirement in the rule and how this was related to the development of a state nutrient policy and program.

Chairman Powdrill entertained a motion to adopt IDEM's suggested changes into the proposed rule. Mr. Ted Alexander made a motion and Mr. David Wagner seconded. With a voice vote, the board unanimously voted to adopt IDEM's suggested changes.

In addition, Ms. Nancy King explained what voting options were available to the board. Following Ms. King's clarification, Mr. Alexander made a motion to final adopt the proposed rule as amended, and Mr. Mark Legan seconded. With a roll call vote, the board voted 6-2 to final adopt the CFO proposed rule as amended.

Concentrated Animal Feeding Operations (CAFO) Rule

Chairman Powdrill opened the public hearing to consider final adoption of the Concentrated Animal Feeding Operations rule. He introduced Exhibit 1-B, the IDEM's suggested changes to the proposed rule, and Exhibit 2-B, proposed rule as preliminarily adopted, into the record of hearing.

Mr. Palin spoke for the agency. He explained how the agency has tried to incorporate the federal rule language to include the recent changes that have occurred due to federal court decisions. He elaborated about how the agency had hoped that EPA would have developed a guidance document to deal with certain issues during the time the agency was preparing its proposed rule. If so, Mr. Palin indicated that a federal guidance document would have allowed the state's proposed rule to be able to provide more specificity.

Chairman Powdrill called for public commentors. There were two: Ms. Barbara Sha Cox, concerned farmer; and Mr. Josh Trenary, Indiana Pork Advocacy Coalition.

The public hearing concluded, and there was a board discussion.

Mr. Wagner proposed that there should be a rule language change under 327 IAC 15-16-7(e), and Mr. Alexander seconded. With a voice vote, the board voted unanimously to amend IDEM's suggested changes. Thereafter, a motion was made and seconded to adopt IDEM's suggested changes as amended with a voice vote.

Chairman Powdrill then entertained a motion for the final adoption of the proposed CAFO rule. Mr. Wagner made a motion to final adopt the proposed rule, and Mr. Robert Warnock seconded. With a roll call vote, the board unanimously voted for the final adoption of the Concentrated Animal Feeding Operations rule.

Emergency Rules for Concentrated Animal Feeding Operations (CAFO)

Chairman Powdrill opened the board action for consideration of adoption of the CAFO emergency rules under IC 4-22-2-37.1. He announced that, if adopted, the emergency rule would become effective on December 15, 2011 and would remain in effect for 90 days. He noted that it was the first extension of this particular emergency rule. He then introduced Exhibit C, proposed emergency rule, into the record of hearing.

Ms. King spoke for the agency. She reminded the board about how the emergency rule continues to allow the state to maintain compliance with the existing federal law until the state's CAFO rule becomes effective.

There was no board discussion. Chairman Powdrill entertained a motion to adopt the proposed emergency rule. Mr. Alexander made a motion to adopt the proposed emergency rule and Mr. Legan seconded. With a roll call vote, the board voted unanimously for the adoption of the proposed CAFO emergency rule.

6. OPEN FORUM

There was none.

7. ADJOURNMENT

The next meeting is tentatively scheduled for 1:30 p.m. EST on Wednesday, January 11, 2012, at the Indiana Government Center South Conference Room 22. Chairman Powdrill adjourned the meeting at 5:05 p.m.

CHAIRPERSON

The summary is derived from Rules Development Branch staff members' notes. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management. To view approved summaries or minutes, you may go online to <http://www.in.gov/idem/4707.htm>.